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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ANDREW DeVIVO, on behalf of himself
9 and all others similarly situated,

10 Plaintiffs,

11 v.

12 SOVEREIGN LENDING GROUP
13 INCORPORATED,

14 Defendant.

CASE NO. C22-5254RSM

ORDER GRANTING IN PART
MOTION FOR PROTECTIVE
ORDER

15 This matter comes before the Court on Defendant Sovereign Lending Group (“SLG”)’s
16 Motion for a Protective Order and to Quash Third Party Subpoenas, Dkt. #22. The Court has
17 determined that the parties have satisfied LCR 37’s meet and confer requirement and that oral
18 argument is unnecessary.

19 This is a putative class action alleging SLG violated the Telephone Consumer
20 Protection Act (“TCPA”) by calling (1) members of the National Do Not Call Registry without
21 consent; and (2) individuals that had previously made “do-not-call” requests. *See* Dkt. #1 at 9-
22 11. SLG moves to quash subpoenas issued by Plaintiff Andrew DeVivo seeking documents
23 from two non-party Better Business Bureau (“BBB”) locations, “BBB Great West + Pacific” in
24 Tacoma, Washington, and “Better Business Bureau Serving the Pacific Southwest” in Newport
Beach, California. *See* Dkt. #23-1, Ex. A and Ex. B. Both subpoenas seek “all documents

1 related to complaints regarding Sovereign Lending Group, Incorporated,” from January 1,
 2 2018, to the present. *Id.* In the alternative, SLG moves to limit responses to the Subpoenas “to
 3 complaints involving (1) calls to individuals who claimed they were on the National Do Not
 4 Call Registry and were called without consent; and (2) calls to individuals who claimed they
 5 were called after they had made a ‘do-not-call’ request to SLG.” Dkt. #22 at 5. SLG also
 6 moves to block BBB from providing identifying information for consumers who submitted
 7 complaints. *Id.*

8 Federal Rule of Civil Procedure 26 sets the broad scope of permissible discovery:
 9 Unless otherwise limited by court order, the scope of discovery is as follows:

10 Parties may obtain discovery regarding any nonprivileged matter
 11 that is relevant to any party's claim or defense and proportional to
 12 the needs of the case, considering the importance of the issues at
 13 stake in the action, the amount in controversy, the parties’ relative
 14 access to relevant information, the parties’ resources, the
 importance of the discovery in resolving the issues, and whether
 the burden or expense of the proposed discovery outweighs its
 likely benefit. Information within this scope of discovery need not
 be admissible in evidence to be discoverable.

15 Fed. R. Civ. P. 26(b)(1). This standard applies to third-party subpoenas. Under Rule
 16 45(d)(3)(A), the Court must quash or modify a subpoena that requires disclosure of privileged
 17 or other protected matter or subjects a person to undue burden. The Court may limit the extent
 18 of discovery if the discovery sought “can be obtained from some other source that is more
 19 convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i). The party
 20 who moves to quash a subpoena has the burden of persuasion. *See Moon v. SCP Pool Corp.*,
 21 232 F.R.D. 633, 637 (C.D. Cal. 2005). Additionally, “[a] party or any person from whom
 22 discovery is sought may move for a protective order.” Fed. R. Civ. P. 26(c)(1).

23 A party generally lacks standing under Federal Rule of Civil Procedure 45 to challenge
 24 a subpoena issued to a third party absent a claim of privilege, proprietary interest, or personal

1 interest in the subpoenaed matter. *Campagnolo S.R.L. v. Full Speed Ahead, Inc.*, 2010 U.S.
2 Dist. LEXIS 148788, *2 (W.D. Wash. Jan. 4, 2010) (citing, *inter alia*, *Washington v. Thurgood*
3 *Marshall Academy*, 230 F.R.D. 18, 21 (D.D.C. 2005)).

4 As was the situation in *Campagnolo*, cited heavily by SLG, the Court finds that SLG
5 does not claim any privilege or protectable interest in the subpoenaed material and that it has no
6 standing to quash the subpoenas under Rule 45.

7 The requested relief is properly considered as a motion for protective order under Rule
8 26(c). A party may move for a protective order to restrict the scope of discovery under that rule
9 if it believes its own interests are jeopardized by nonparty subpoenas. *Campagnolo*, 2010 U.S.
10 Dist. LEXIS 148788 at *3 (citing cases). “The court may, for good cause, issue an order to
11 protect a party or person from annoyance, embarrassment, oppression, or undue burden or
12 expense...” Fed. R. Civ. P. 26(c)(1). “The decision to issue a protective order rests within the
13 sound discretion of the trial court.” *Seiter v. Yokohama Tire Corp.*, 2009 WL 2461000, *1
14 (W.D. Wash. 2009).

15 SLG argues that BBB complaints are publicly available and that subpoenas are
16 unnecessary. Plaintiff concedes he is essentially seeking the contact information for
17 complainants, which is not public information. Dkt. #25 at 7 (“The subpoenas target only the
18 contact information for consumers that reported Sovereign’s misconduct to the BBB.”).

19 SLG speculates, without evidence, that the BBB offices would be burdened by these
20 subpoenas. To be clear, neither BBB location has filed anything with the Court. SLG also
21 argues that Plaintiff is on a fishing expedition for a replacement named Plaintiff to represent the
22 class. These arguments are not persuasive. The issue of the viability of this named Plaintiff’s
23 claims is not properly before the Court.
24

1 The Court finds that Plaintiff's requested information is relevant and generally
2 proportional to the needs of the case under the Rule 26(b) standard. However, SLG arguably
3 has an interest in the production of complaints made to the BBB, and the Court agrees that
4 these requests are overly broad. The Court will impose SLG's proposed limitation, argued in
5 the alternative: "to complaints involving (1) calls to individuals who claimed they were on the
6 National Do Not Call Registry and were called without consent; and (2) calls to individuals
7 who claimed they were called after they had made a 'do-not-call' request to SLG." Any BBB
8 complaint against SLG that includes the words "Do Not Call," "Do Not Call Registry," or the
9 like would be relevant, and the Court trusts Plaintiff to properly word the subpoenas to capture
10 only such complaints. Requesting records that contain a limited number of specific search
11 terms will reduce the burden on the two BBB offices.

12 SLG's request to prevent Plaintiff from obtaining contact information is meritless.
13 Plaintiff has presented at least some basis for obtaining the information other than identifying
14 new or replacement class members: to substantiate class allegations, and to discover whether
15 the putative class suffered the same alleged injury in order to establish commonality and
16 typicality. *See* Dkt. #25 at 9. Courts routinely allow the collection of this kind of information
17 in putative class actions. *See Rojas v. Bosch Solar Energy Corp.*, 2020 U.S. Dist. LEXIS
18 29163, *8 (N.D. Cal., Feb. 20, 2020).

19 Accordingly, having reviewed the relevant briefing and the remainder of the record, the
20 Court hereby finds and ORDERS that Defendants' Motion for Protective Order, Dkt. #22, is
21 GRANTED IN PART as stated above. Plaintiffs are directed to immediately send revised
22 subpoenas to the two BBB locations consistent with the above. Neither party is entitled to costs
23 given the split nature of the Court's ruling. The parties are directed to attempt to resolve any
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1 issues related to these subpoenas in good faith and consistent with this Order prior to seeking
2 further assistance from the Court.

3 DATED this 9th day of December, 2022.

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5 RICARDO S. MARTINEZ
6 UNITED STATES DISTRICT JUDGE
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